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### Legend

Distributing =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

Partnership =

Business A Companies =

Business A =

Business B =

Business C =

Cash Amount =

Equipment of Business B =

Contracts =

Country Z =

a =

b =

c =

d =

e =

Transition Services =

Transition Period =

Administrative Assignment =

Dear :

This letter responds to your March 2, 2009 request for rulings as to the federal income tax consequences of a series of proposed transactions. The information submitted for consideration in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, no determination has been made regarding whether the Internal Spin-off or External Spin-off (each as defined below) (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d) of the Income Tax Regulations), or (iii) is part of a plan (or series of related transactions)

pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing or the controlled corporation (see § 355(e) of the Internal Revenue Code and § 1.355-7 of the Income Tax Regulations).

## Summary of Facts

The facts below occur before the Proposed Transaction (as defined below) unless otherwise indicated.

Distributing is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return. Distributing has outstanding a single class of widely held and publicly traded common stock.

Distributing wholly owns Controlled 1, Sub 1, Sub 3, and DRE 1 and indirectly (through two wholly owned entities) wholly owns Partnership. Sub 1 wholly owns Sub 2, each of the Business A Companies, and a% of Sub 6. DRE 1 owns b% of Sub 6. Sub 2 wholly owns DRE 3 and DRE 4. Sub 3 owns c% of Sub 4, which owns c% of Sub 5. Partnership owns d% of each of Sub 4 and Sub 5. Each of DRE 1, DRE 3, DRE 4, and the Business A Companies is an entity disregarded as separate from its owner under Treas. Reg. § 301.7701-3. DRE 2 will be newly formed by Controlled 1 in connection with the Proposed Transactions (as defined below) and will be an entity disregarded as separate from its owner under Treas. Reg. § 301.7701-3. Controlled 2 will be newly formed by Controlled 1 in connection with the Proposed Transactions and will have outstanding a single class of common stock.

Controlled 1 was recently formed by Distributing to serve as the corporation which is distributed by Distributing in the External Spin-off, as defined below. Controlled 1 has outstanding a single class of common stock. Prior to the Sub 1 Merger, as defined below, Controlled 1 will not hold any property or have any tax attributes, except for a nominal amount of assets held to facilitate its organization and tax attributes related to such assets.

Distributing, through its separate affiliated group, as defined in section 355(b)(3)(B) (the “Distributing SAG”), conducts various businesses, including (through Sub 1 and other foreign and domestic subsidiaries) Business A, and (through Sub 1) Business B and Business C. Each of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, and Sub 6 is a member of the Distributing SAG. Following the Proposed Transactions, (i) the Distributing SAG will conduct Business A, (ii) Controlled 1, directly and through its separate affiliated group, as defined in section 355(b)(3)(B) (the “Controlled 1 SAG”), will conduct Business B, (iii) and Controlled 2, directly and through its separate affiliated group, as defined in section 355(b)(3)(B) (the “Controlled 2 SAG”), will conduct Business C.

Financial information has been received indicating that each of Business A, Business B, and Business C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

### **Proposed Transactions**

For what are represented to be valid corporate business purposes, Distributing has proposed the following steps (the “Proposed Transactions”):

- (i) Sub 1 merges into Controlled 1, with Controlled 1 surviving (the “Sub 1 Merger”).
- (ii) Sub 2 merges into Controlled 1, with Controlled 1 surviving.
- (iii) Controlled 1 forms Controlled 2 and DRE 2.
- (iv) DRE 1 distributes its interest in Sub 6 and its Country Z workforce to Distributing, which then transfers such interest in Sub 6 to Sub 3.
- (v) Distributing sells its interest in Sub 3 and the Country Z workforce to Controlled 1 for cash (that Distributing believes is equal to the fair market value of the transferred property). Controlled 1 then contributes the Equipment of Business B (and related contracts and workforces) to DRE 2.
- (vi) Controlled 1 contributes to Controlled 2 all of the assets and liabilities of Business C and its interest in each of DRE 3, DRE 4, and the Business A Companies (the “Contributed Assets” and the “Contribution,” respectively).
- (vii) Partnership sells its interests in Sub 4 and Sub 5 to Controlled 1 in exchange for an amount of cash (that Distributing believes is equal to the fair market value of the transferred property).
- (viii) Distributing assigns all of its rights under the Contracts to Controlled 1 in exchange for an amount of cash (that Distributing believes is equal to the fair market value of the transferred rights).
- (ix) Controlled 1 borrows cash from an unrelated third party and distributes the Cash Amount to Distributing (the “Cash Distribution”).
- (x) Controlled 1 distributes all of the outstanding Controlled 2 stock to Distributing (the “Internal Distribution,” and the Internal Distribution together with the Contribution, the “Internal Spin-off”).

(xi) Controlled 1 recapitalizes its outstanding stock into a to-be-determined number of shares.

(xii) Distributing distributes all of the Controlled 1 stock pro rata to its shareholders (the "External Spin-off").

Distributing will distribute cash in lieu of issuing fractional shares to any shareholder that would otherwise be entitled to receive a fractional share of Controlled 1 stock as a result of the External Spin-off.

Any intercompany receivables or payables between Distributing and its subsidiaries (other than Controlled 1 and its subsidiaries, as determined immediately before the External Spin-off) on the one hand, and Controlled 1 and its subsidiaries (as determined immediately before the External Spin-off), on the other hand, will be wholly satisfied with cash in connection with the External Spin-off.

In connection with the Proposed Transactions, but prior to the Sub 1 Merger, Partnership effected the Administrative Assignment.

In connection with the Proposed Transactions, the Distributing group and the Controlled 1 group will enter into agreements to provide for the Transition Services over the Transition Period and to govern the allocation and sharing of tax liabilities and certain other obligations (collectively, the "Transition Agreements"). The Transition Agreements will include certain indemnification provisions that may require Distributing and/or Controlled 1 to make indemnity payments to each other following the External Spin-off (any such payments, "Indemnity Payments").

Certain of the Distributing employees who will be assigned to Controlled 1 in connection with the External Spin-off (the "Assigned Employees") currently own Employee Rights (as defined below). The Assigned Employees will be treated as having been terminated by Distributing on the date of the External Spin-off and any Employee Rights held by such Assigned Employees will expire pursuant to their terms (generally e days after such termination).

Following the External Spin-off, the Assigned Employees' expired Employee Rights are expected to be replaced by Controlled 1 with certain corresponding rights with respect to Controlled 1 stock. In addition, in the External Spin-off, the Assigned Employees and Distributing's other employees owning Employee Rights will receive the following or any combination thereof: (i) their pro rata share of Controlled 1 stock, (ii) a cash equivalent payment, (iii) an upward adjustment to the number of Employee Rights held, or (iv) nothing, in each case depending upon the date of grant and the type of the Employee Rights held by such employee.

Controlled 1 will adopt a shareholder rights plan ("Controlled Rights Plan") pursuant to which, in the External Spin-off, Distributing will distribute a preferred stock purchase right (a "Controlled Right") with each share of Controlled 1 stock. The Controlled Rights will trade together with the shares of Controlled 1 stock until and unless certain events occur as described in the Controlled Rights Plan.

## **Representations**

The following representations are made with respect to the Sub 1 Merger:

- (a) The fair market value of the Controlled 1 stock received by Distributing will be approximately equal to the fair market value of the Sub 1 stock surrendered in exchange therefor.
- (b) Immediately following consummation of the Sub 1 Merger, Distributing will own all of the outstanding Controlled 1 stock and will own such stock solely by reason of its ownership of Sub 1 stock immediately prior to the Sub 1 Merger.
- (c) Controlled 1 has no plan or intention to issue additional shares of its stock following the Sub 1 Merger, except in connection with the Proposed Transactions, to satisfy Employee Rights, or as contemplated by the business purposes described in representation.
- (d) Immediately following the consummation of the Sub 1 Merger, Controlled 1 will possess the same assets and liabilities, except for a nominal amount of assets held to facilitate its organization, as those possessed by Sub 1 immediately prior to the Sub 1 Merger. Assets distributed to shareholders, assets used to pay expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub 1 immediately preceding the Sub 1 Merger will, in the aggregate, constitute less than one percent of the net assets of Sub 1. There will be no dissenting shareholders.
- (e) At the time of the Sub 1 Merger, Sub 1 will not have outstanding any warrants, options, convertible securities or any other type of right pursuant to which any person could acquire stock in Sub 1.
- (f) There is no plan or intention for Controlled 1 to reacquire any of the Controlled 1 stock issued in the Sub 1 Merger.
- (g) The liabilities of Sub 1 treated as assumed (as determined under section 357(d)) by Controlled 1 were incurred by Sub 1 in the ordinary course of its business and are associated with the assets transferred.
- (h) Distributing will pay its respective expenses, if any, incurred in connection with the Sub 1 Merger.

(i) Sub 1 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A) of the Code.

The following representations are made with respect to the Internal Spin-off:

(j) Any indebtedness owed by Controlled 2 (or its subsidiaries) to Controlled 1 (or its subsidiaries) after the Internal Spin-off will not constitute stock or securities.

(k) No part of the consideration to be distributed by Controlled 1 in the Internal Spin-off will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Controlled 1.

(l) Each of Controlled 1 and Controlled 2 will treat all members of its separate affiliated group (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

(m) The five years of financial information submitted on behalf of Business B conducted by Controlled 1's SAG is representative of the present business operations of Business B conducted by the Controlled 1 SAG, and there have been no substantial operational changes since the date of the last financial statements submitted.

(n) The five years of financial information submitted on behalf of Business C conducted by Controlled 2's SAG is representative of the present business operations of Business C, and there have been no substantial operational changes since the date of the last financial statements submitted.

(o) Following the Internal Spin-off, the Controlled 1 SAG and the Controlled 2 SAG will each continue the active conduct of its business, independently and with its separate employees.

(p) No intercorporate debt will exist between Controlled 1 and Controlled 2 at the time of, or subsequent to, the Internal Spin-off, except for indebtedness otherwise arising in the ordinary course of business.

(q) Payments made in connection with all continuing transactions, if any, between Controlled 1 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(r) No party to the Internal Spin-off is an investment company as defined in sections 368(a)(2)(F)(iii) and (iv).



- (s) The Internal Spin-off is being carried out to facilitate the External Spin-off. The Internal Spin-off is motivated, in whole or substantial part, by this purpose.
- (t) The Internal Spin-off is not being used principally as a device for the distribution of the earnings and profits of Controlled 1 or Controlled 2 or both.
- (u) Controlled 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Spin-off.
- (v) The total adjusted basis and the fair market value of the assets transferred to Controlled 2 in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled 2, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Controlled 1 and transferred to its creditors in connection with the reorganization.
- (w) The liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (x) The total fair market value of the assets transferred to Controlled 2 in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 2 by Controlled 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Controlled 1 in connection with the exchange.
- (y) The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.
- (z) The aggregate fair market value of the assets transferred to Controlled 2 in the Contribution will equal or exceed the aggregate adjusted basis of these assets.
- (aa) For purposes of section 355(d), immediately after the Internal Spin-off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spin-off.

(bb) For purposes of section 355(d), immediately after the Internal Spin-off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spin-off or (ii) attributable to distributions on Controlled 1 stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spin-off.

(cc) The Internal Spin-off is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Controlled 1 or Controlled 2 (including any predecessor or successor of any such corporation).

(dd) Immediately after the Internal Spin-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Controlled 1 or Controlled 2, who did not hold such an interest immediately before the Internal Spin-off or (ii) neither Controlled 1 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(ee) Each of Controlled 1, Controlled 2, and Distributing will pay its respective expenses, if any, incurred in connection with the Internal Spin-off.

The following representations are made with respect to the External Spin-off:

(ff) Any indebtedness owed by Controlled 1 (or its subsidiaries) to Distributing (or its subsidiaries) after the External Spin-off will not constitute stock or securities.

(gg) No part of the consideration to be distributed by Distributing in the External Spin-off will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except for shares of Controlled 1 stock that are expected to be distributed in the External Spin-off with respect to the employee stock options, restricted shares of stock, and restricted stock units with respect to Distributing stock that will be outstanding at the time of the External Spin-off ("Employee Rights").

(hh) The total number of shares of Controlled 1 stock that are (i) expected to be distributed in the External Spin-off with respect to Employee Rights, or (ii) acquired following the External Spin-off pursuant to the vesting or exercise of the replacement awards with respect to Employee Rights that Controlled 1 is expected to issue with

respect to Controlled 1 stock, will represent less than 20 percent of the Controlled 1 stock outstanding immediately after the External Spin-off.

(ii) Each of Distributing and Controlled 1 will treat all members of its separate affiliated group (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

(jj) The five years of financial information submitted on behalf of Business A conducted by Distributing's SAG is representative of the present business operations of Business A conducted by the Distributing SAG, and there have been no substantial operational changes since the date of the last financial statements submitted.

(kk) The five years of financial information submitted on behalf of Business B conducted by Controlled 1's SAG is representative of the present business operations of Business B, and there have been no substantial operational changes since the date of the last financial statements submitted.

(ll) Following the External Spin-off, the Distributing SAG and the Controlled 1 SAG will each continue the active conduct of its business, independently (except as contemplated by the Transition Agreements) and with its separate employees.

(mm) No intercorporate debt will exist between Distributing and Controlled 1 at the time of, or subsequent to, the External Spin-off, except for payables arising under the Transition Agreements or indebtedness otherwise arising in the ordinary course of business.

(nn) Immediately before the External Spin-off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13, as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled 1 stock will be included in income immediately before the External Spin-off.

(oo) Except for Indemnity Payments or for payments made for Transition Services during the Transition Period, any payments made in connection with all continuing transactions between Distributing and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(pp) No party to the External Spin-off is an investment company as defined in sections 368(a)(2)(F)(iii) and (iv).

(qq) The External Spin-off is being carried out for the following corporate business purposes: (i) to facilitate the external acquisition growth strategies of Business A by increasing the relative value of Distributing stock for use as acquisition currency, (ii) to facilitate the acquisition growth strategies of Business B by allowing it to more effectively participate in industry consolidation, (iii) to enable the management of Distributing and Controlled 1 to focus resources more effectively on the unique business strategies of their respective businesses, and (iv) to enhance Distributing's reputation as a Business A service provider. The External Spin-off is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(rr) The External Spin-off is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled 1 or both.

(ss) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the External Spin-off (other than any intercompany payables satisfied in connection with the External Spin-off).

(tt) For purposes of section 355(d), immediately after the External Spin-off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Spin-off.

(uu) For purposes of section 355(d), immediately after the External Spin-off, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Spin-off or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Spin-off.

(vv) The External Spin-off is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled 1 (including any predecessor or successor of any such corporation).

(ww) Immediately after the External Spin-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing

or Controlled 1 or (ii) neither Distributing nor Controlled 1 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(xx) Each of Distributing, Controlled 1, and the shareholders of Distributing will pay its respective expenses, if any, incurred in connection with the External Spin-off.

(yy) The payment of cash in lieu of fractional shares of Controlled 1 stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 1 of issuing and maintaining fractional shares and does not represent separately bargained for consideration. The total cash that will be paid in the External Spin-off to any Distributing shareholder instead of issuing fractional shares of Controlled 1 stock will not exceed one percent of the total consideration that will be distributed in the External Spin-off. Any fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 1 stock.

(zz) The Controlled Rights are the type of rights described in Rev. Rul. 90-11, 1990-1 C.B. 10.

## **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Sub 1 Merger:

(1) The Sub 1 Merger will be a reorganization within the meaning of section 368(a)(1)(F). Sub 1 and Controlled 1 will each be “a party to the reorganization” within the meaning of section 368(b).

(2) Distributing will not recognize any gain or loss on its exchange of Sub 1 stock for Controlled 1 stock in the Sub 1 Merger. Section 354(a).

(3) Sub 1 will not recognize any gain or loss on the deemed exchange in the Sub 1 Merger. Sections 361(a) and (c) and 357(a).

(4) Controlled 1 will not recognize any gain or loss on the deemed exchange in the Sub 1 Merger. Section 1032(a).

(5) Controlled 1's basis in each asset received from Sub 1 in the Sub 1 Merger will equal the basis of such asset in the hands of Sub 1 immediately before the Sub 1 Merger. Section 362(b).

(6) Controlled 1's holding period in each asset received from Sub 1 in the Sub 1 Merger will include the holding period during which Sub 1 held such asset. Section 1223(2).

(7) The aggregate basis of the Controlled 1 stock received by Distributing in the Sub 1 Merger will be the same as Distributing's aggregate basis in the Sub 1 stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1).

(8) The holding period of the Controlled 1 stock received by Distributing will include the holding period of the Sub 1 stock surrendered in exchange therefor, provided that the shares of Sub 1 stock are held as a capital asset by such holder on the date of the Sub 1 Merger. Section 1223(1).

(9) The taxable year of Sub 1 does not close on the date of the Sub 1 Merger, and such tax year continues in the name of Controlled 1. Treas. Reg. § 1.381(b)-1 and Rev. Rul. 57-276, 1957-1 C.B. 126.

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Cash Distribution and the Internal Spin-off:

(10) The Cash Distribution will be a distribution of property described in section 301(a) which will be excluded from Distributing's income and which will reduce Distributing's aggregate basis in its Controlled 1 stock prior to the Internal Spin-off by the amount of the Cash Distribution. Section 301(a), Treas. Reg. § 1.1502-13(f)(2), and Treas. Reg. § 1.1502-32.

(11) The Contribution, followed by the Internal Distribution, will be a reorganization within the meaning of section 368(a)(1)(D). Controlled 1 and Controlled 2 will each be "a party to the reorganization" within the meaning of section 368(b).

(12) Controlled 1 will not recognize any gain or loss on the Contribution. Sections 361(a) and 357(a).

(13) Controlled 2 will not recognize any gain or loss on the Contribution. Section 1032(a).

(14) Controlled 2's basis in each asset received from Controlled 1 in the Contribution will equal the basis of such asset in the hands of Controlled 1 immediately before the Contribution. Section 362(b).

(15) Controlled 2's holding period in each asset received from Controlled 1 in the Contribution will include the period during which Controlled 1 held such asset. Section 1223(2).

(16) Controlled 1 will not recognize any gain or loss on the Internal Spin-off. Section 361(c).

(17) Distributing will not recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of Controlled 2 stock in the Internal Spin-off. Section 355(a)(1).

(18) The aggregate basis of the Controlled 1 stock and the Controlled 2 stock in the hands of Distributing immediately after the Internal Spin-off will be the same as the aggregate basis of the Controlled 1 stock held by Distributing immediately before the Internal Spin-off (reduced by the amount of the Cash Distribution), allocated among Distributing's shares of Controlled 1 stock and Controlled 2 stock in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1).

(19) The holding period of the Controlled 2 stock received by Distributing in the Internal Spin-off will include the holding period of the Controlled 1 stock with respect to which the Controlled 2 stock was received, provided the shares of Controlled 1 stock are held as a capital asset by Distributing on the date of the Internal Spin-off. Section 1223(1).

(20) Earnings and profits will be allocated between Controlled 1 and Controlled 2 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10 and 1.1502-33.

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the External Spin-off:

(21) Distributing will not recognize any gain or loss on the External Spin-off. Section 355(c)(1).

(22) The holders of Distributing stock will not recognize any gain or loss (and will not otherwise include any amount in income) upon receipt of the Controlled 1 stock in the External Spin-off. Section 355(a)(1).

(23) The aggregate basis of the Distributing stock and the Controlled 1 stock in the hands of each holder thereof immediately after the External Spin-off (including any fractional share interest in Controlled 1 stock to which such holder may be entitled) will be the same as the aggregate basis of the Distributing stock held by such holder immediately before the External Spin-off, allocated among such holder's shares of Distributing stock and Controlled 1 stock in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(a)(1).

(24) The holding period of the Controlled 1 stock received by each holder of Distributing stock in the External Spin-off (including any fractional share interest in Controlled 1 stock to which such holder may be entitled) will include the holding period of the Distributing stock with respect to which the Controlled 1 stock was received,

provided the shares of Distributing stock are held as a capital asset by such holder on the date of the External Spin-off. Section 1223(1).

(25) A shareholder who receives cash in lieu of fractional shares of Controlled 1 stock will recognize gain or loss measured by the difference between the basis of the fractional share interest in Controlled 1 stock to which the shareholder would otherwise be entitled and the amount of cash received. Section 1001 and Rev. Rul. 66-365, 1966-2 C.B. 116. Provided that the fractional share interest is a capital asset in the hands of the shareholder on the date of the External Spin-off, any gain or loss will be capital gain or loss. Sections 1221 and 1222.

(26) Provided that, at the time of the External Spin-off, the Controlled Rights remain contingent, non-exercisable, and subject to redemption if issued, the receipt of such rights by Distributing and the holders of Distributing stock will not be a distribution or receipt of property, an exchange of stock or property (either taxable or nontaxable), or any other event giving rise to the realization of income or gain by Distributing, Controlled 1, or the holders of Distributing stock. Rev. Rul. 90-11, 1990 -1 C.B. 10.

(27) Earnings and profits will be allocated between Distributing and Controlled 1 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10 and 1.1502-33.

(28) Except for purposes of section 355(g), any Indemnity Payments made by Distributing to Controlled 1, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the External Spin-off or for a taxable period beginning on or before and ending after the External Spin-off and (ii) will not have become fixed and ascertainable until after the External Spin-off will be treated for tax characterization purposes as having occurred immediately before the External Spin-off (see Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

### **Caveats**

We express no opinion regarding the tax treatment of the Proposed Transactions under other provisions of the Internal Revenue Code or the Income Tax Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding whether the Internal Distribution or External Distribution (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d) of the Income Tax Regulations); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) of the Internal Revenue Code and § 1.355-7 of the Income Tax Regulations). In



addition, we express no opinion regarding the tax consequences with regard to the Employee Rights. Furthermore, we express no opinion with regard to the tax consequences of Distributing's sale of its interest in Sub 3 and the Country Z workforce to Controlled 1 for cash. We express no opinion with regard to the tax consequences of Partnership's sale of its interests in Sub 4 and Sub 5 to Controlled 1 in exchange for cash. In addition, we express no opinion with regard to the tax consequences of Distributing's assignment of its rights under the Contracts to Controlled 1 in exchange for cash.

### **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling. In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Steven J. Hankin  
Senior Technician Reviewer, Branch 6  
Associate Chief Counsel (Corporate)